

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2284**

---

**Introduced by Assembly Member Williams**  
(Principal coauthor: Senator Correa)

February 21, 2014

---

An act to add Article 1.5 (commencing with Section 42445) to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to recycling.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2284, as amended, Williams. Recycling: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires retailers of rechargeable batteries to have in place a system for the acceptance and collection of rechargeable batteries.

This bill would enact the Primary Battery Stewardship Act and would define terms for purposes of that act. The act would require, by January 1, 2016, a producer of a primary battery or a primary battery-containing product to submit to the department a primary battery stewardship plan with regard to the primary batteries, or primary battery-containing products, that are sold, offered for sale, or distributed in the state by that producer. The bill would authorize a producer to elect to appoint a primary battery stewardship organization to submit a plan for those batteries or products. The bill would specify procedures for the development of the plan and the elements required to be included in the plan, including providing for a program that would achieve a

specified collection rate. The bill would require the department to review the plan and would deem the plan to be approved, unless the department makes a specified notification.

The bill would require a producer or the primary battery stewardship organization to implement the approved plan, including achieving the specified collection rate. The bill would prohibit a producer, retailer, or wholesaler, on and after July 1, 2016, from selling a primary battery or a primary battery-containing product, unless the battery or product is an approved product, as specified. The bill would require each producer or organization to prepare and submit to the department an annual report describing the activities carried out pursuant to the plan and would require the department to review the report. The department would be authorized to require a producer or organization to amend and resubmit a plan if the department notifies a producer or organization that the report does not meet certain requirements.

The bill would authorize the department to require a producer or organization submitting a plan to pay the department an administrative filing fee in an amount sufficient to cover the cost of the department's plan review, but not more than \$5,000. The bill would create the Primary Battery Stewardship Account in the Integrated Waste Management Fund and would require the fees be deposited into that account, for appropriation by the Legislature to the department, to cover the department's cost of plan review.

The bill would provide for the imposition of administrative civil penalties upon a producer that is in violation of the act or upon a wholesaler or retailer selling a primary battery or battery-containing products in violation of the act. The bill would create the Primary Battery Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require the penalties be deposited into the subaccount.

The bill would also allow a producer or organization that is implementing a plan and incurring specified costs to bring a civil action to recover costs, damages, and fees from another producer for failure to comply with the act's provisions.

The bill would declare that the act fully occupies and preempts the entire field of the stewardship of primary batteries and primary battery-containing products and would prohibit a city, county, or district, including a chartered city or county, from adopting or enforcing an ordinance that regulates the disposal, collection, and recycling of

primary batteries or requires reporting by producers or primary battery stewardship programs.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) In early 2006, most household batteries were classified by  
4 the state as universal waste and are now prohibited from being  
5 disposed of in solid waste landfills. Under state law, “household  
6 batteries” are defined as including batteries made of mercury,  
7 alkaline, carbon-zinc, and nickel-cadmium, and other batteries  
8 typically generated as household waste, including, but not limited  
9 to, batteries used in hearing aids, cameras, watches, computers,  
10 calculators, flashlights, lanterns, standby and emergency lighting,  
11 portable radios, television sets, meters, toys, and clocks. Household  
12 batteries do not include lead-acid batteries, batteries that are sold  
13 in a “covered electronic device,” as defined in Section 42463 of  
14 the Public Resources Code, and batteries that are not easily  
15 removable or are not intended or designed to be removed from the  
16 products, other than by the manufacturer.

17 (b) Approximately 80 percent of batteries sold in this state are  
18 primary batteries, including such household batteries as alkaline  
19 batteries, and these primary batteries are not covered under existing  
20 retail take-back requirements.

21 (c) The requirements of the Primary Battery Stewardship Act,  
22 as added by Section 2 of this act, apply to each individual producer  
23 of primary batteries or primary battery-containing products, with  
24 respect to the batteries or products that are sold, distributed, or  
25 offered in the state by that producer. The act also provides an  
26 option for a producer to implement this act in conjunction with  
27 other producers in this state.

28 SEC. 2. Article 1.5 (commencing with Section 42445) is added  
29 to Chapter 8 of Part 3 of Division 30 of the Public Resources Code,  
30 to read:

Article 1.5. Primary Battery Stewardship Act

42445. This article shall be known, and may be cited, as the Primary Battery Stewardship Act.

42445.1. For purposes of this article, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Actual direct costs” means the costs to collect, transport, and recycle a discarded primary battery, including any other actual environmental management costs relating to those actions.

(b) “Approved product” means a primary battery or a primary battery-containing product that meets all of the following requirements:

(1) The producer of that primary battery or primary battery-containing product has submitted a plan to the department or the producer has designated an organization that has submitted a plan to the department.

(2) The plan specified in paragraph (1) is approved in accordance with Section 42445.6.

(3) The program implementing the approved plan collects the products subject to the plan in accordance with the collection rate specified in the plan.

(c) “Bona fide rechargeable battery stewardship organization” means a person operating a system that provides for the acceptance and collection of used rechargeable batteries pursuant to the Rechargeable Battery Recycling Act of 2006 (Chapter 8.4 (commencing with Section 42451)).

(d) “Brand” means a name, symbol, word, or traceable mark that does either of the following:

(1) Identifies a primary battery and attributes the primary battery to the owner or licensee of the name, symbol, word, or traceable mark as the producer.

(2) Identifies a primary battery-containing product and attributes the primary battery to the owner or licensee of the primary battery-containing product as the producer.

(e) “Collection rate” means the percentage of primary batteries, including those taken from primary battery-containing products, by weight, that are collected during a calendar year by a producer, or by the producers participating in an organization, as compared to the average annual weight of all primary batteries that were

1 estimated to have been sold in the state during the previous three  
2 calendar years by that producer or those producers. Estimates of  
3 primary batteries sold in the state may be based on a reasonable  
4 pro rata calculation based on national sales.

5 (f) “Discarded primary battery” means a primary battery that is  
6 discarded, as defined in subdivision (b) of Section 25124 of the  
7 Health and Safety Code.

8 (g) “Primary battery” means a nonrechargeable battery that  
9 weighs 2 kilograms or less, including, but not limited to, alkaline,  
10 carbon-zinc, and lithium metal, that is typically generated as waste,  
11 as defined in Section 25124 of the Health and Safety Code.

12 (h) (1) “Primary battery-containing product” means a product  
13 that contains, or is packed with, a primary battery, including, but  
14 not limited to, a camera, watch, calculator, flashlight, lantern,  
15 portable radio, toy, or clock.

16 (2) “Primary battery-containing product” does not include any  
17 of the following:

18 (A) A covered electronic device, as defined in Section 42463.

19 (B) A product from which a primary battery is not easily  
20 removed or is not intended or designed to be removed, other than  
21 by the manufacturer.

22 ~~(C) A medical device, as defined in the federal Food, Drug, and~~  
23 ~~Cosmetic Act by paragraph (h) of Section 321 of Title 21 of the~~  
24 ~~United States Code, that is implanted.~~

25 *(C) A Class III medical device, as specified in Section 360c of*  
26 *Title 21 of the United States Code.*

27 *(D) A Class II medical device, as specified in Section 360c of*  
28 *Title 21 of the United Code, that is not exempt from subsection (k)*  
29 *of Section 360 of Title 21 of the United States Code (Section 510(k)*  
30 *of the federal Food, Drug, and Cosmetic Act)*

31 (i) “Primary battery stewardship organization” or “organization”  
32 means an organization appointed by one or more producers to  
33 design, submit, implement, and administer a primary battery  
34 stewardship plan pursuant to this article.

35 (j) “Primary battery stewardship plan” or “plan” means a plan  
36 submitted to the department pursuant to Sections 42445.2 and  
37 42445.3 by an individual producer or a primary battery stewardship  
38 organization.

(k) (1) “Producer” means, with regard to a primary battery or a primary battery-containing product that is sold, offered for sale, or distributed in the state, one of the following:

(A) The person who manufactures the primary battery or the primary battery-containing product, and who sells or offers for sale that primary battery or that primary battery-containing product, in the state, under that person’s own name or brand.

(B) If there is no person to whom subparagraph (A) applies, the owner or licensee of a trademark or brand under which the primary battery or primary battery-containing product is sold or distributed in the state, whether or not the trademark is registered.

(C) If there is no person to whom subparagraph (A) or (B) applies, the person who imports the primary battery or primary battery-containing product into the state for sale or distribution.

(2) “Producer” does not include either of the following:

(A) A person who manufactures, sells, offers for sale, or imports a primary battery-containing product in the state who complies with Section 42445.5.

(B) A person who sells, offers for sale, distributes, or imports a primary battery or primary battery-containing product, if the total retail value of the sale, distribution, or importation in this state is less than five hundred dollars (\$500) annually.

(l) “Program” means the system for the collection, transportation, recycling, and disposal of primary batteries that is implemented pursuant to an approved primary battery stewardship plan.

(m) “Recycling” has the same meaning as defined in Section 40180.

(n) “Retailer” means a person that offers primary batteries or primary battery-containing products in a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, through any means, including remote offerings such as sales outlets, catalogs, or an Internet Web site.

(o) “Wholesaler” means a person that offers primary batteries or primary battery-containing products for sale in this state in a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, and for which the primary batteries or primary battery-containing products are intended to be resold in a retail sale.

1 42445.2. (a) On or before January 1, 2016, each producer shall  
2 submit a primary battery stewardship plan that is in compliance  
3 with Section 42445.3 to the department. A producer may elect, in  
4 cooperation with one or more other producers, to appoint a primary  
5 battery stewardship organization to implement this article on the  
6 producer's behalf, and the organization shall submit a primary  
7 battery stewardship plan to the department on or before January  
8 1, 2016.

9 (b) (1) If a producer appoints a primary battery stewardship  
10 organization, the primary battery stewardship organization shall  
11 establish an advisory committee to provide input during the  
12 development of the primary battery stewardship plan. The advisory  
13 committee shall include only parties who have no financial interest  
14 in the collection or recycling of primary batteries and shall include,  
15 to the extent possible, one member from each of the following  
16 organizations:

17 (A) Retailers.

18 (B) Local governments.

19 (C) Public representatives.

20 (D) Haulers.

21 (E) Recyclers.

22 (2) If the primary battery stewardship organization is unable to  
23 recruit members from the organizations identified in paragraph  
24 (1) to participate in the advisory committee, the organization shall  
25 provide an explanation to the department in the plan or in the report  
26 required by Section 42445.10.

27 (c) (1) Except as provided in paragraph (4), a producer or  
28 primary battery stewardship organization shall consult with  
29 stakeholders during the development of the primary battery  
30 stewardship plan and shall solicit stakeholder comments.

31 (2) The producer or organization shall make all stakeholder  
32 meetings available using telecommunication.

33 (3) This article does not require a producer or primary battery  
34 stewardship organization to share confidential business information  
35 under the Uniform Trade Secrets Act (Title 5 (commencing with  
36 Section 3426) of Part 1 of Division 4 of the Civil Code).

37 (4) If a producer or organization determines that stakeholder  
38 involvement is not feasible, the producer or organization shall  
39 provide an explanation to the department in the plan or in the report  
40 required by Section 42445.10.

1 42445.3. A primary battery stewardship plan shall include, at  
2 a minimum, all of the following:

3 (a) Contact information for all participating producers.

4 (b) The brands of primary batteries covered by the plan and the  
5 collection rate of the primary batteries collected by the producer  
6 or the producers participating in the organization during the  
7 previous calendar year.

8 (c) The collection rate for the primary batteries subject to the  
9 plan in the following manner:

10 (1) The plan shall provide for a program that will achieve a  
11 10-percent collection rate two years after the date the program is  
12 implemented and a 20-percent collection rate five years after the  
13 program is implemented.

14 (2) The collection rate may be revised as provided in Section  
15 42445.4.

16 (d) The number and type of convenient collection points that  
17 shall be provided by the program free of charge for consumers in  
18 all counties of the state where each producer subject to the plan  
19 sells, offers for sale, or distributes primary batteries or primary  
20 battery-containing products. *The plan shall allow a collection point*  
21 *to accept not more than 100 primary batteries per visit by a*  
22 *consumer.*

23 ~~(1) The plan shall allow a collection point to accept not more~~  
24 ~~than 100 primary batteries per visit by a consumer.~~

25 ~~(2) Unless the primary battery or primary-battery-containing~~  
26 ~~product is sold only by a single retailer, including a retailer~~  
27 ~~operating under the same name with more than one location, in~~  
28 ~~the state, the plan shall establish collection points in the following~~  
29 ~~manner:~~

30 ~~(A) Except as provided in subparagraph (B), at least one~~  
31 ~~collection point shall be established in each county that is not a~~  
32 ~~rural county, where the primary batteries or primary~~  
33 ~~battery-containing products subject to the plan are sold or~~  
34 ~~distributed.~~

35 ~~(B) If a county is a rural county, on and after January 1, 2018,~~  
36 ~~at least one collection point shall be established in that county for~~  
37 ~~every 10,000 people in that county, and, on and after January 1,~~  
38 ~~2021, at least one collection point shall be established in that county~~  
39 ~~for every 5,000 people in that county.~~



1 (e) A description of the methods that will be used to responsibly  
2 manage discarded primary batteries to ensure that the components  
3 of the discarded primary batteries, to the extent economically and  
4 technically feasible, are recycled or otherwise managed responsibly.

5 (f) The roles and responsibilities of key participants in the  
6 primary battery distribution chain.

7 (g) The outreach procedures that will be used to provide notice  
8 of the program to businesses, local agencies, retailers, wholesalers,  
9 and haulers.

10 (h) The manner in which existing primary battery collection  
11 points and other programs can be identified and leveraged to  
12 achieve the required collection rates.

13 (i) The financing method selected to fund the implementation  
14 of the plan to achieve the required collection rates, considering all  
15 of the following factors:

16 (1) Battery chemistry.

17 (2) The estimated total weight of primary batteries, including  
18 the estimated total weight of primary batteries that are contained  
19 in primary battery-containing products, that will be sold,  
20 distributed, or offered in the state by the producer or the producers  
21 participating in the plan, during each calendar year.

22 (3) The cost of collecting, transporting, recycling and  
23 responsibly managing the expected total weight of discarded  
24 primary batteries collected during each calendar year.

25 (4) The administrative costs to the department of reviewing the  
26 plan pursuant to this article.

27 (5) The cost of all other stewardship program elements,  
28 including, but not limited to, stakeholder participation and public  
29 outreach.

30 (j) Planned educational activities that will further the goal of  
31 achieving the plan's required collection rate.

32 (k) At the election of the producer or primary battery  
33 stewardship organization, provisions for the implementation of  
34 the program in conjunction with those cities, counties, districts,  
35 and regional agencies in whose jurisdictions the program will be  
36 implemented. If the producer or primary battery stewardship  
37 organization makes an election pursuant to this subdivision, the  
38 producer or primary battery stewardship organization shall provide,  
39 to cities, counties, districts, and regional agencies participating in  
40 the stewardship ~~program~~ *program*, one or more of the following:

1 (1) (A) Reasonable reimbursement for the mutually  
2 agreed-upon, actual direct costs per unit of weight incurred by the  
3 local agency in collecting primary batteries.

4 (B) The producer or organization may request an independent  
5 audit of submitted reimbursement costs prior to making a payment  
6 pursuant to subparagraph (A). If the independent audit confirms  
7 the reasonableness of the reimbursement request, the audit costs  
8 shall be paid by the producer or primary battery stewardship  
9 organization.

10 (2) The location and contact information for the convenient  
11 collection points for discarded primary batteries that are located  
12 within the local agency's jurisdiction and that are consistent with  
13 the plan.

14 (3) Products for setting up a collection point within the local  
15 agency's jurisdiction and providing for the pickup of discarded  
16 primary batteries collected, including, but not limited to, arranging  
17 for the management of those discarded primary batteries.

18 42445.4. A producer or a primary battery stewardship  
19 organization may petition the department to adjust the collection  
20 rate specified in the plan. The department may grant an adjustment  
21 to the collection rate if the department determines that  
22 technological, ecological, cultural, economic, or other impediments  
23 or circumstances that are beyond the control of the producer or  
24 primary battery stewardship organization limit the ability of the  
25 producer or organization to achieve the specified collection rate.

26 42445.5. (a) A person who manufactures, sells, offers for sale,  
27 or imports a primary battery-containing product in this state shall  
28 not be a producer for purposes this article if the person does both  
29 of the following:

30 (1) Affirms to the department that the person only uses primary  
31 batteries supplied by a producer participating in an approved  
32 battery stewardship program.

33 (2) Reports to the producer specified in paragraph (1) or to the  
34 organization ~~in which~~ that producer elects to join, the estimated  
35 use of the primary batteries in the primary battery-containing  
36 products to be sold in the state by that person, which estimate may  
37 be based on a reasonable pro rata calculation of national sales of  
38 the primary battery-containing products.

39 (b) A producer or a primary battery stewardship organization  
40 that operates a program that covers the primary battery contained

1 in the primary battery-containing product of a person who, pursuant  
2 to subdivision (a), is not a producer shall list the person as a  
3 participant in its program, subject to any limitations or exceptions  
4 as may be indicated by the information submitted by the exempted  
5 person producing the primary battery-containing product.

6 42445.6. (a) Upon receipt of a plan pursuant to Section  
7 42445.2, the department shall review the plan and determine  
8 whether the plan provides for the establishment of a primary battery  
9 stewardship program that includes all of the elements required by  
10 Section 42445.3. As part of the plan review, the department shall  
11 review the plan's financing mechanism and determine whether the  
12 plan considers the factors specified in subdivision (i) of Section  
13 42445.3. In conducting a review pursuant to this subdivision, the  
14 department may consult with producers, primary battery  
15 stewardship organizations, retailers, and recyclers.

16 (b) A plan shall be deemed approved by the department 30 days  
17 after the plan is received, unless the department, in writing, notifies  
18 the producer or the organization that submitted the plan that the  
19 plan is deficient and identifies specific elements of Section 42445.3  
20 that were not satisfactorily addressed.

21 (c) A producer or a primary battery stewardship organization  
22 is not required to provide any services to a person exempted from  
23 the definition of a producer pursuant to Section 42445.5.

24 (d) The department shall make all approved primary battery  
25 stewardship plans available to the public on the department's  
26 Internet Web site, but shall not publish information protected under  
27 the Uniform Trade Secrets Act (Title 5 (commencing with Section  
28 3426) of Part 1 of Division 4 of the Civil Code). The total weight  
29 of batteries collected by a program implementing an approved plan  
30 is not confidential business information under that act.

31 42445.7. (a) Upon approval of the plan pursuant to Section  
32 42445.6, the producer or the primary battery stewardship  
33 organization shall do all of the following:

34 (1) No later than six months after the date of the approval of  
35 the plan, implement the plan, including, but not limited to,  
36 achieving the collection rates specified in the plan.

37 (2) Prepare and submit to the department the report required by  
38 Section 42445.10.

39 (3) If a producer or primary battery stewardship organization  
40 elects to implement the plan in conjunction with cities, counties,

1 districts, and regional agencies pursuant to subdivision (k) of  
2 Section 42445.3, take the actions specified in that subdivision.

3 (b) A local agency that elects to participate in a program  
4 pursuant to subdivision (k) of Section 42445.3 shall separate from  
5 other materials the primary batteries for collection by the producer  
6 or primary battery stewardship organization.

7 42445.8. (a) Within 30 days after the approval of a primary  
8 battery stewardship plan, and on or before March 1 annually  
9 thereafter, the department shall post on its Internet Web site a list  
10 of the brands of primary batteries or primary battery-containing  
11 products that are approved products.

12 (b) A primary battery stewardship program is in compliance  
13 with this article if it achieves the collection rate specified in the  
14 plan, as provided in paragraph (1) of subdivision (c) of Section  
15 42445.3.

16 42445.9. (a) On and after July 1, 2016, a producer, retailer, or  
17 a wholesaler shall not offer a primary battery or primary  
18 battery-containing product for sale in this state, or offer a primary  
19 battery or primary battery-containing product for promotional  
20 purposes in this state, unless the primary battery or primary  
21 battery-containing product is an approved product.

22 (b) On or before October 1, 2016, a retailer may sell the  
23 remaining stock of those primary batteries or primary  
24 battery-containing products that are not approved products.

25 (c) The department shall not take an enforcement action pursuant  
26 to this article on or before October 1, 2016, against a retailer with  
27 regard to primary batteries or primary battery-containing products  
28 that are not approved products.

29 (d) A producer who seeks to sell or offer for sale or promotional  
30 purposes a primary battery or primary battery-containing product  
31 that was not sold or offered for sale in the state before July 1, 2016,  
32 shall notify the department prior to selling or offering to sell that  
33 primary battery or primary battery-containing product in the state.  
34 The department shall list that producer as a new producer on the  
35 department's Internet Web site. On or before 90 days after making  
36 that notification, the producer shall submit a primary battery  
37 stewardship plan to the department or join an existing primary  
38 battery stewardship organization that has an approved plan. If the  
39 producer does not meet either of those requirements, the producer  
40 shall not sell the primary battery or primary battery-containing

1 product after that 90-day period and a retailer may sell the primary  
2 battery or primary battery-containing product only for 120 days  
3 following the termination of that 90-day period.

4 (e) This section does not require the department to conduct or  
5 commission a compliance survey or prohibit a primary battery  
6 stewardship organization from conducting or commissioning a  
7 compliance survey.

8 42445.10. (a) On or before two years after the date of the initial  
9 approval of a primary battery stewardship plan, and once every  
10 year thereafter, except as specified in subdivision (e), the producer  
11 or primary battery stewardship organization implementing the plan  
12 shall prepare and submit to the department a report describing the  
13 activities carried out pursuant to the plan during the previous  
14 calendar year. The report shall include, but is not limited to, all of  
15 the following elements:

16 (1) The weight of primary batteries collected by the program  
17 in the prior year and the collection rate achieved in the prior year.

18 (2) A report of the estimated total sales data by weight for  
19 primary batteries sold in the state, or the weight of primary batteries  
20 contained in primary battery-containing products sold in the state,  
21 for the previous three calendar years.

22 (3) Financial statements that detail the financing of the plan,  
23 consistent with the requirements of subdivision (i) of Section  
24 42445.3, except as follows:

25 (A) If the plan is operated by a producer that is a single retailer,  
26 including a retailer with more than one physical location, the report  
27 is not required to provide this information.

28 (B) If the producer or organization operates a program in another  
29 state, in addition to this state, the producer or organization may  
30 submit a financial statement that includes all of those states,  
31 including this state.

32 (4) Locations and contact information for all collection points  
33 set up by the producers covered by the plan.

34 (5) Examples and a description of educational materials used  
35 to increase collection.

36 (6) The manner in which the collected primary batteries were  
37 managed.

38 (7) An explanation of why collection targets were not met, if  
39 applicable.

1 (8) Any material change to the primary battery stewardship  
2 plan.

3 (b) The department shall review each report to confirm that all  
4 report elements specified in subdivision (a) have been addressed.  
5 A report submitted on behalf of a regional or national primary  
6 battery stewardship organization may include reasonable pro rata  
7 estimates of the elements specified in paragraphs (2) and (3) of  
8 subdivision (a). The report shall be deemed approved unless the  
9 department, in writing, notifies the producer or organization within  
10 30 days of receipt that the report is deficient, and identifies specific  
11 elements of subdivision (a) that were not satisfactorily addressed.

12 (c) This section does not require or authorize the department to  
13 publicly disclose the confidential business information of a  
14 producer or primary battery stewardship organization, if the  
15 information is protected under the Uniform Trade Secrets Act  
16 (Title 5 (commencing with Section 3426) of Part 1 of Division 4  
17 of the Civil Code). The total weight of batteries collected by an  
18 approved plan is not confidential business information under that  
19 act.

20 (d) The department shall make all approved reports available  
21 to the public on the department's Internet Web site, except as  
22 provided in subdivision (c).

23 (e) On and after three years after the initial implementation date  
24 of a plan, if the collection rate for the primary batteries subject to  
25 the plan meets the collection rate specified in the plan, the producer  
26 or organization shall thereafter submit the report required by this  
27 section every two years.

28 42445.11. (a) If the department notifies a producer or  
29 organization pursuant to subdivision (b) of Section 42445.10 that  
30 a report does not meet the requirements of subdivision (a) of  
31 Section 42445.10, or the report confirms that the collection rate  
32 or the establishment of the collection points specified in the plan  
33 were not met, the department shall notify the producer or  
34 organization in writing within 30 days after receiving the report.  
35 The notification shall require the continued implementation of the  
36 existing approved plan and shall require the producer or  
37 organization to amend and resubmit the plan. The producer or  
38 organization shall amend and resubmit the plan to the department  
39 no later than 45 days after this notification, or no later than a later  
40 date that may be agreed to by the department.

1 (b) If the producer or primary battery stewardship organization  
2 does not amend and resubmit the plan pursuant to subdivision (a),  
3 or if the department does not approve the amended plan, the  
4 department shall, in consultation with the producer or primary  
5 battery stewardship organization, determine which actions should  
6 be taken to obtain approval by the department.

7 (c) The department shall not disapprove an amended and  
8 resubmitted plan without providing the producer or organization  
9 with notice and an opportunity to request a hearing. A producer  
10 or primary battery stewardship organization whose amended and  
11 resubmitted plan is disapproved may file an action for judicial  
12 appeal of the disapproval. A producer participating in a plan, and  
13 any wholesaler, distributor, or retailer, may continue to sell the  
14 producer's primary batteries or products in the state during the  
15 pendency of any appeal.

16 42445.12. (a) A producer or organization submitting a plan  
17 pursuant to this article shall also pay an administrative filing fee  
18 in an amount, established by the department, sufficient to cover  
19 the reasonable cost of the department's plan review, but not more  
20 than five thousand dollars (\$5,000).

21 (b) The Primary Battery Stewardship Account and the Primary  
22 Battery Stewardship Penalty Subaccount are hereby established  
23 in the Integrated Waste Management Fund.

24 (c) The administrative filing fees collected pursuant to this  
25 section shall be deposited in the Primary Battery Stewardship  
26 Account and shall be expended by the department, upon  
27 appropriation by the Legislature, to cover the department's plan  
28 review costs.

29 (d) All penalties collected pursuant to this article shall be  
30 deposited in the Primary Battery Stewardship Penalty Subaccount  
31 and may be expended by the department, upon appropriation by  
32 the Legislature, to cover the department's costs to implement and  
33 enforce this article.

34 42445.13. (a) The department may impose administrative civil  
35 penalties not to exceed one thousand dollars (\$1,000) per day upon  
36 a producer that is not in compliance with this article, or upon a  
37 wholesaler or retailer that violates Section 42445.9. An  
38 administrative civil penalty may be imposed only by the department  
39 and shall not be imposed by any other state or local agency.

1 (b) A producer, wholesaler, or retailer that removes from sale  
2 any primary battery or primary battery-containing product within  
3 90 days of discovery that it is not in compliance with this article  
4 is not in violation of Section 42455.9.

5 (c) A producer, wholesaler, or retailer that purchases a primary  
6 battery or primary battery-containing product which is verified to  
7 be an approved product at the time of purchase is not in violation  
8 of Section 42455.9 if, at the time ~~when~~ the producer, wholesaler,  
9 or retailer sells that primary battery or primary battery-containing  
10 product, it is no longer an approved product.

11 (d) Before imposing a penalty pursuant to this section, the  
12 department shall issue a compliance order to the producer,  
13 wholesaler, or retailer selling the primary battery or primary  
14 battery-containing product that allows 30 days from the date of  
15 the compliance order to cease sales of the primary battery or  
16 primary battery-containing product.

17 42445.14. (a) A producer or primary battery stewardship  
18 organization that implements a plan in compliance with this article  
19 and incurs in excess of three thousand dollars (\$3,000) in actual  
20 direct costs for collecting, handling, recycling, or properly  
21 disposing of primary batteries sold or offered for sale in the state  
22 by a producer that does not operate an approved battery stewardship  
23 program or does not participate in an approved battery stewardship  
24 organization, may bring a civil action to recover costs, damages,  
25 and fees, as specified in subdivision (c), from the producer for  
26 failure to comply with this article, if that producer can be identified  
27 from a brand or marking on a discarded primary battery or from  
28 other information.

29 (b) (1) An action under subdivision (a) may be brought against  
30 one or more producers who are not in compliance with this article.

31 (2) An action under subdivision (a) shall not commence earlier  
32 than 60 days after a written notice of the organization's or  
33 producer's intention to file an action has been provided to the  
34 department and to the producer who is alleged to be noncompliant.

35 (3) An action under subdivision (a) shall not commence if the  
36 department has commenced an enforcement action against the  
37 producer who is alleged to be noncompliant and is diligently  
38 pursuing that action.



1 (c) In an action under this section, the plaintiff may recover all  
2 of the following amounts from a producer who has been found to  
3 be noncompliant:

4 (1) The costs the plaintiff incurred in collecting, handling,  
5 recycling, or properly disposing of primary batteries reasonably  
6 identified as having originated from the noncompliant producer.

7 (2) An amount of damages equal to no more than three times  
8 those costs specified in paragraph (1).

9 (3) The plaintiff's attorney's fees and costs of bringing the  
10 action.

11 42445.15. This article does not limit, supersede, duplicate, or  
12 otherwise conflict with the authority of the Department of Toxic  
13 Substances Control under Section 25257.1 of the Health and Safety  
14 Code to fully implement Article 14 (commencing with Section  
15 25251) of Chapter 6.5 of Division 20 of the Health and Safety  
16 Code, including the authority of the department to include primary  
17 batteries in its primary battery registry.

18 42445.16. Due to the need to provide a consistent statewide  
19 program for the regulation of primary batteries and to protect the  
20 public and the environment, this article fully occupies and preempts  
21 the entire field of the stewardship of primary batteries and primary  
22 battery-containing products. A city, county, or district, including  
23 a chartered city or county, shall not adopt or enforce an ordinance  
24 that regulates the disposal, collection, and recycling of primary  
25 batteries or requires reporting by producers or primary battery  
26 stewardship programs.

27 42445.17. (a) It is the intent of the Legislature that a producer  
28 or a primary battery stewardship organization preparing,  
29 submitting, and implementing a primary battery stewardship plan  
30 pursuant to this article, and wholesalers or retailers who engage  
31 in conduct authorized by this article, are granted immunity,  
32 individually and jointly, from ~~federal and~~ state antitrust laws for  
33 the limited purpose of establishing and implementing a program  
34 and complying with the requirements of this article. It is further  
35 the intent of the Legislature that the activities of a producer,  
36 organization, and the wholesalers or retailers that implement and  
37 comply with this article are not in restraint of trade, a conspiracy,  
38 or combination thereof, or any other unlawful activity in violation  
39 of any provisions of ~~federal or~~ state antitrust laws.

- 1 (b) Except as provided in subdivision (c), an action taken to  
2 increase the recycling of primary batteries pursuant to this article  
3 by a producer or primary battery stewardship organization that  
4 affects the types or quantities being recycled or the cost and  
5 structure of any return program is not a violation of either the  
6 Cartwright Act (Chapter 2 (commencing with Section 16700) of  
7 Part 2 of Division 7 of the Business and Professions Code), or the  
8 Unfair Practices Act (Chapter 4 (commencing with Section 17000)  
9 of Part 2 of Division 7 of the Business and Professions Code).
- 10 (c) Subdivision (b) shall not apply to any agreement establishing  
11 or affecting the price of primary batteries or the output or  
12 production of primary batteries, or any agreement restricting the  
13 geographic area in which, or customers to whom, primary batteries  
14 will be sold.